

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5331 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 & 3 to 5 No.  
No.2 Yes.

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HUSSAIN ISMAIL MIYANA

Versus

STATE OF GUJARAT

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Appearance:

MR ZUBIN F BHARDA for Petitioner

MISS.SIDDHI TALATI, AGP for Respondents.

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/12/98

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India has been filed seeking a writ of certiorari for quashing the detention order dated 16.4.1998 passed by the Detaining Authority under section 3(2) of the Prevention of Antisocial Activities Act,1985 (for short 'PASA) and a writ of habeas corpus seeking

immediate release of the petitioner from illegal detention.

The brief facts are that the Detaining Authority viz. Police Commissioner, Rajkot after considering the report of the sponsoring authority, 4 cases registered against the petitioner under Prohibition Act and the statements of three witnesses recorded by the sponsoring authority came to the conclusion that the petitioner is a bootlegger who is running a factory of country made liquor and after manufacturing the same he is storing and selling the country made liquor. In prosecution of his business as bootlegger the petitioner at times had threatened the witnesses who objected the activities of the petitioner which amounted to disturbance of public order. Considering the activities of the petitioner to be prejudicial for maintenance of public order the impugned order of detention was passed which is under challenge in this writ petition on two grounds.

The first contention has been that one copy of bail order referred by the Detaining Authority was not wholly legible and since it was partly illegible the detenu was prevented from giving effective reply in his defence and this has violated his constitutional right under Article 22(5) of the Constitution of India. I am not impressed with this contention. This contention has no force for the obvious reason that the bail order was passed in favour of the petitioner. It is not his case that any observation adverse to the petitioner was made in the bail order and that adverse portion in the bail order was relied upon by the Detaining Authority in reaching subjective satisfaction against the prejudicial activities of the petitioner. If the bail order was in favour of the petitioner without any adverse comment against him its copy was furnished by the Detaining Authority to the petitioner in routine manner because the said order was part of the record of the report of the sponsoring authority. Consequently on this ground it cannot be said that the petitioner was prevented from making effective representation in his defence.

The next ground is that the prejudicial activities of the petitioner cannot be said to be prejudicial to maintenance of public order. From the grounds of detention it appears that the business and occupation of the petitioner is running distillery in country made liquor, manufacturing such country made liquor, storing the same and selling the same. These activities can safely be termed as bootlegging activities within the meaning of section 2(b) of the PASA Act

Further, three cases were registered against the petitioner under Prohibition Act which further confirm that the petitioner's activities can safely be said to be bootlegging activity.

There is some casual reference in the grounds of detention that the petitioner is a headstrong and dangerous person. But it seems that within the definition of section 2(C) of the PASA Act, the petitioner cannot be termed as dangerous person in as much as nothing has been disclosed in the grounds of detention that the petitioner is habitual in committing offences punishable under Chapters XVI & XVII of the IPC or Chapter 5 of the Arms Act.

It is then to be considered whether mere bootlegging activity of the petitioner is enough to keep him under preventive detention. Even under the PASA such activities cannot be prevented by keeping the person under preventive detention. Mere bootlegging activity is not enough to keep a person under preventive detention. Further requirement is that the activity of such person must be prejudicial to maintenance of public order. This flows from the Act itself. The Apex Court in the oft quoted ruling in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City, AIR 1989 SC Pg.491 observed that it may be that the petitioner is a bootlegger within the meaning of section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act, except as laid down in sub-section 4 of section 3 of the Act, his activities as bootlegger affected adversely or are likely to affect adversely the maintenance of public order.

Regarding maintenance of public order the Apex Court in this case considered some of the incidents relied upon by the Detaining Authority and observed that it is true some incidents of beating by the petitioner had taken place as alleged by the witnesses. But such incidents, in our view, do not have any bearing on the maintenance of public order. The petitioner may be punished for the alleged offences committed by him but, surely, the acts constituting the offences cannot be said to have affected the even tempo of the life of the community.

In the light of the above observation of the Apex Court two things flow. One is that mere bootlegging activity is not enough to detain the petitioner under PASA. His antisocial activities which have tendency of

disturbing public order have to be taken into consideration. Stray incidents in which the petitioner gave threat to some of the witnesses will not constitute disturbance of public order. At the most such incidents may tantamount to disturbance of law and order for which the petitioner could be effectively booked and dealt with under the ordinary law.

Thus, the antisocial activities must be related with the business and occupation of the petitioner as bootlegger. His general activity not connected with bootlegging cannot be considered for reaching subjective satisfaction that it had tendency prejudicial for maintenance of public order. The bootlegging activity coupled with antisocial activities which had the tendency of disturbing public order alone could be considered before passing orders for preventive detention. Thus three cases registered against the petitioner under the Prohibition Act cannot be said to have disturbed public order inasmuch as there is no allegation that when the factory of the petitioner was raided and country made liquor was recovered, he created such situation on account of which even tempo of life of the community was disturbed. Thus, three cases have no bearing with maintenance of public order.

Coming to the statements of the witnesses considered by the Detaining Authority first witness was present at the place of his business. The petitioner along with his associates forced the witness to keep country made liquor in his shop due to fear of police. The witness refused to oblige the petitioner whereupon the petitioner became angry and first beaten the witness. The witness showed his inclination to lodge FIR with the police whereupon the petitioner became angry. He took out knife and threatened the witness to kill him. This was solitary incident viz. incident between the petitioner and one witness. No doubt in this incident there is mention that the petitioner also ran with open knife towards people collected at the spot. There is however no mention that these persons collected at the spot on the alarm of the victim. Thus, the collection of people at the spot seems to be imaginary and it cannot be said that this incident although connected with bootlegging activity, had disturbed public order.

The second witness was inside of his house. The petitioner along with his associates was selling country made liquor. Upon objection by the witness the petitioner showing knife threatened the witness to kill him. Here there is mention that at the spot when people

collected the petitioner ran towards them with open knife. Due to this atmosphere of fear of terror was created and the people closed doors of their houses. Such temporary incident, even if at a public place cannot be said to have disturbed even tempo of life of the community in the area. If such stray offences are committed, for safety, people may take shelter inside their houses but that does not mean that the situation was prejudicial to maintenance of public order.

The third witness had said nothing about bootlegging activity. His incident related to demand of money by the petitioner from him and upon refusal the witness was threatened with open knife. This incident is not connected with bootlegging activity of the petitioner and this solitary incident is not enough to brand the petitioner as dangerous person. It could not be considered by the Detaining Authority for reaching subjective satisfaction for ordering preventive detention of the petitioner.

Thus, overall consideration of the grounds of detention indicates that the petitioner is no doubt bootlegger but his activities were not prejudicial to maintenance of public order and as such the detention order against him has been rendered invalid. Writ petition therefore succeeds and is hereby allowed. The impugned order dated 16.4.1998, Annexure "A" is quashed. The petitioner shall be released from custody forthwith unless he is wanted in connection with some other criminal case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt